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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/517,595

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Jan De Kroon

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9094

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EXAMINER

FREEMAN, JOHN D

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/20/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/517,595	Applicant(s) DE KROON ET AL.	
	Examiner John Freeman	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nijenhuis et al. (WO 00/35992) in view of Van Marcke (US 5975359).
3. Nijenhuis et al. (hereafter Nijenhuis) disclose randomly branched polyamides conforming to the formulae outlined by Applicant (p2 ln 29-p3 ln 32). The polyamides are suitable for films and molded articles (p7 ln 13).
4. Nijenhuis is silent, however, with regard to a multilayer film as claimed by applicant.
5. Multilayer films of polyamide and polyethylene are well-known in the art. For example, Van Marcke discloses a laminated sheet (Fig. 3) of polyamide 52 and polyethylene 54 (col 4 ln 14-17). Van Marcke even suggests that one seeking lower melting temperatures should use non-linear polyethylene (col 4 ln 42-45).
6. At the time of the invention, it would have been obvious to one of ordinary skill in the art to combine the polyamide layer of Nijenhuis with a polyethylene layer to make a film. Structures comprising polyamide and polyethylene are well-known in the art as evidenced by Van Marcke. They are useful because the polyamide layer is a good gas barrier while polyethylene is a good moisture barrier. It further would have been obvious to one of ordinary skill to try non-linear polyethylene in the course of optimizing such a film; non-linear polyethylene has different rheological and melting properties compared to other forms of polyethylene.

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Response to Arguments

7. Applicant's arguments filed 17 June 2008 have been fully considered but they are not persuasive.

8. Regarding rejections under 35 USC 112:

9. Applicant's amendments satisfy the requirements of 35 USC 112. The examiner withdraws the rejections.

10. Regarding Double Patenting Rejections:

11. Applicant states the examiner takes the position that "the improvement sought to be patented herein is merely a matter of obvious choice or design as compared to the invention claimed in the '704 application" (p5). In fact the examiner takes the position that the identified claims of each application describe multilayer structures that are substantially the same, and therefore are not patentably distinct, as noted in the Office Action mailed 18 September 2008. Applicant argues "in situations such as this, the issue is not one of 'obviousness', but rather one of 'identity of invention'" (p6). As noted in the basis for the nonstatutory double patenting rejection:

A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

12. Applicant further argues "one of the claims of one of the '704 application and the present application could be infringed literally without infringing literally the claims of the other" (p6). The examiner respectfully disagrees: the present claim 1 recites a process comprising "connecting [a branched] polyamide layer to [a] layer of another polymer", and claim 1 of '704 recites a process comprising the "application of a layer of a [branched] polyamide to a substrate". As noted in the previous Office Action, page 2, lines 30-31 and page 3, lines 11-12 of '704 disclose the use of a polymer substrate. Therefore, one of ordinary skill would clearly envisage the use of a polymer substrate in '704, which would infringe upon the present claims.

13. Regardless, the terminal disclaimer filed on 18 December 2008 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent

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granted on Application Number 10/520,704 has been reviewed and is accepted. The terminal disclaimer has been recorded. Therefore, the double patenting rejection is withdrawn.

14. Regarding rejections under 35 USC 102(b):

15. Applicant's clarification regarding the calculations of the prior art and the invention proved most helpful. Originally, the examiner mistakenly thought only those acids having a functionality greater than two were used in the formulas of present claim 1. However, the claim states the summations are "conducted for all units derived from carboxylic acids and amines in the polyamide." As such, benzoic acid is included in the calculations. Therefore, Cordes's examples do not read on the present polyamides. The examiner withdraws the rejection.

16. Regarding rejections under 35 USC 103(a):

17. Applicant argues "Nijenhuis does not relate to a laminate structure nor to a process of making a laminate, let alone that branched polyamides allow higher production speeds" (p8). The examiner notes no limitations regarding "production speeds" are found in the present claims.

18. Applicant also argues a "person of ordinary skill in the art, wishing to increase the production speed of making multilayer flat films would have no incentive to employ the branched polyamide as disclosed by Nijenhuis" (p8). The examiner notes that a rejection under 35 USC 103(a) does not need the same motivation as Applicant for the rejection to be proper. The examiner argues that multilayer films containing polyamide and polyethylene were so well-known in the art at the time of the invention one of ordinary skill would easily conceive of the use of Nijenhuis's branched polyamides in such films.

19. Applicant argues in Marcke "nowhere is production speed mentioned or suggested" (p8). As noted above, nowhere in the present claims is production speed mentioned. The examiner notes that a rejection under 35 USC 103(a) does not need the same motivation as Applicant for the rejection to be proper. The examiner argues that multilayer films containing polyamide and polyethylene were so well-known in the art at the time of the invention, as shown by Marcke, one of ordinary skill would easily conceive of the use of Nijenhuis's branched polyamides in such films.

20. Applicant acknowledge "multilayer flat films comprised of linear polyamide and another polymer are known", but argues the use of branched polyamides according to Nijenhuis would require Applicant's

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disclosure. The examiner respectfully disagrees. Nijenhuis discloses the branched polyamides can be made into films and molded articles (p7 ln 13). Films of polyamide were long used in multilayer constructions for, among other properties intrinsic to polyamide, it's oxygen barrier properties. Under Applicant's reasoning, an artisan of ordinary skill must necessarily ignore polyamide's long use in multilayer structures simply because Nijenhuis is silent with regard to multilayer structures. Artisans do not read disclosures in a vacuum. One of ordinary skill would recognize the use of Nijenhuis's polyamide films in conjunction with other well-known films.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Thoma '981 discloses polyamides falling under the scope of the present polyamides (specifically examples 3, 4, and 7-9).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Freeman whose telephone number is (571)270-3469. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571)272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John Freeman
Examiner
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/Callie E. Shosho/
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